

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

READY CAPITAL CORPORATION,
a Maryland corporation, READYCAP
COMMERCIAL, LLC, a Delaware limited
liability company, and READYCAP
HOLDINGS, LLC, a Delaware limited
liability company,

Plaintiffs,

vs.

READY CAPITAL CORPORATION,
a Michigan corporation, NATIONS HOME
LOAN CORPORATION, a Michigan
corporation, MPD LLC, a Michigan limited
liability company, and Mark Backonen,

Defendants.

Case No. 19-cv-13536-DML-EAS

Hon. David M. Lawson

SECOND AMENDED COMPLAINT

(Jury Trial Demanded)

Ready Capital Corporation, ReadyCap Commercial, LLC, and ReadyCap Holdings, LLC (collectively, “**Plaintiffs**”) for their Second Amended Complaint against Ready Capital Corporation, Nations Home Loan Corporation, MPD, LLC and Mark Backonen (collectively, “**Defendants**”) state as follows:

PARTIES

1. Plaintiff Ready Capital Corporation (“**Ready Capital**”) is a Maryland corporation with its principal place of business in New York, New York.
2. Plaintiff ReadyCap Commercial, LLC is a wholly owned subsidiary of Ready Capital and a Delaware limited liability company with its principal place of business in Berkeley Heights, New Jersey.

3. Plaintiff ReadyCap Holdings, LLC is a wholly owned subsidiary of Ready Capital and a Delaware limited liability company with its principal place of business in New Providence, New Jersey.

4. Defendant Ready Capital Corporation (“**RCMI**”) is a Michigan corporation with its registered office located at 4540 Echo Rd., Bloomfield Hills, MI 48302.

5. Upon information and belief, RCMI operates a Ready Capital Corporation office located at 199 Pierce St., Birmingham, Michigan 48009.

6. Defendant Nations Home Loan Corporation (“**Nations Home Loan**”) is a Michigan corporation with a registered office located at 4540 Echo Rd., Bloomfield Hills, MI 48302.

7. Defendant MPD, LLC (“**MPD**”) is a Michigan limited liability company with a registered office located at 4540 Echo Rd., Bloomfield Hills, MI 48302.

8. Defendant Mark Backonen (“**Backonen**”) is a Michigan resident.

9. Upon information and belief, Backonen is the sole director and officer of Defendants RCMI, Nations Home Loan and MPD and owns a residential property located at 4540 Echo Rd., Bloomfield Hills, MI 48302.

JURISDICTION AND VENUE

10. This is an action for federal trademark infringement, false designation of origin, and false advertising under the provisions of the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, for deceptive trade practices in violation of the Michigan Consumer Protection

Act under M.C.L. § 445.903, *et seq.*, and for trademark infringement under Michigan common law.

11. This Court has subject matter jurisdiction over the Lanham Act claims asserted in this Complaint under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and has jurisdiction over the state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367.

12. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this District.

GENERAL ALLEGATIONS

Plaintiffs' READYCAP and READY CAPITAL Marks

13. A publicly traded mortgage real estate investment trust, Ready Capital is a non-bank, nationwide real estate and small-business lender specializing in commercial-real-estate-backed loans. Ready Capital employs over 400 lending professionals, has provided over \$3 billion in capital to investors and small businesses across the country, and has been traded on the New York Stock Exchange since November 1, 2016.

14. Formed in 2011 under the name Sutherland Asset Management Corporation, Ready Capital subsequently developed three loan origination groups: ReadyCap Commercial, ReadyCap Lending, and Ready Capital Structured Finance. Since 2013, Ready Capital has provided financing nationwide through one or more of these groups under the READYCAP and/or READY CAPITAL marks (the "**Marks**").

15. ReadyCap Commercial ("**RCC**") was launched to provide long-term, secured debt financing nationwide on stabilized small-balance commercial real estate.

RCC also is an approved Freddie Mac SBL Seller/Servicer, providing multifamily loans. RCC executed its first loan transaction in Dallas, Texas on March 11, 2013.

16. ReadyCap Lending (“**RCL**”) was launched to provide secured and unsecured debt financing to small-business owners nationwide. RCL is an approved U.S. Small Business Administration (“**SBA**”) lender that provides debt financing under the SBA 7(a) program. RCL executed its first loan transaction in Florida on March 31, 2015.

17. Ready Capital Structured Finance (“**RCSF**”) was launched to provide short-term, non-recourse, secured debt financing nationwide on transitional, value-add and event-driven commercial and multifamily real estate. RCSF targets middle-market and institutional commercial real estate sponsors and can provide subordinate debt financing solutions. RCSF executed its first loan transaction in Anaheim, California, on July 6, 2015.

18. All of RCC, RCL, and RCSF were active in Michigan and/or the neighboring states of Indiana and Ohio in their early years, executing a total of 39 loan transactions in the three states in the years 2014–2016.

19. For many years, Ready Capital made extensive and widespread use of its READYCAP Mark. Along with its other advertising and promotional materials, Ready Capital’s primary website, rclending.com, prominently displayed the READYCAP Mark, at least until the launch of RCSF, often shown in the form of the logo.



20. To protect their rights in the READYCAP Mark, Plaintiffs obtained the following federal trademark registrations, all for *financial services, namely loan origination services*:

(a) on October 4, 2012, ReadyCap Commercial, LLC filed for the mark
READYCAP COMMERCIAL, which application registered on November 26,
2013 (Reg. No. 4,441,292);


(b) on October 22, 2012, ReadyCap Commercial, LLC filed for the mark



, which application registered on February 11, 2014 (Reg. No.
4,482,243); and

(c) on March 30, 2016, ReadyCap Holdings, LLC filed for the mark READYCAP,
which application registered on April 4, 2017 (Reg. No. 5,174,821).

21. Also, since at least the time of RCSF's launch, Ready Capital has made extensive and widespread use of its READY CAPITAL Mark. In its May 1, 2015 press release announcing the launch of RCSF's bridge lending platform, Ready Capital

prominently displayed the  composite mark at the head of the press release, combining the READY CAPITAL Mark with the separately registered waterfall logo of its external manager, Waterfall Asset Management, LLC.

22. In addition, beginning on May 7, 2015, Ready Capital featured on the homepage of its primary website, rclending.com, the READY CAPITAL Mark, prominently displaying it at the top of the homepage and featuring associated READY CAPITAL branding. The homepage stated, "Ready Capital is the real estate origination

division of Sutherland Asset Management Corporation (Sutherland), a full-service real estate finance company managed by Waterfall Asset Management, that originates, manages, services and finances primarily commercial loans nationwide.” The homepage then went on to identify RCSF, RCC, and RCL as the “READY CAPITAL LENDING DIVISIONS.”

23. The READY CAPITAL Mark has long been and is today the house mark for all Ready Capital’s lending activities. Illustrating the coast-to-coast nature of its business, Ready Capital made assumed, doing-business-as, or fictitious name filings for the Ready Capital name in South Dakota on April 16, 2015; New York on April 20, 2015; and California on April 21, 2015.

24. Since 2013, Ready Capital has routinely issued press releases under the Marks announcing major transactions, including in Michigan, and has promoted the Marks through accounts on Twitter and Facebook.

25. To further protect its trademark rights, on January 20, 2017, Ready Capital filed a federal trademark application for the READY CAPITAL Mark for *financial services, namely loan origination services*, which registered on April 10, 2018 (Reg. No. 5,444,430).

26. Building on its early success, on October 1, 2018, Sutherland Asset Management Corporation formally changed its name to Ready Capital Corporation, switched its primary website to readycapital.com, changed its trading symbol on the

NYSE to “RC,” and launched a comprehensive brand refresh under the READY

CAPITAL Mark and  logo.

27. Plaintiffs have not authorized Defendants to use the Marks in any manner whatsoever.

Defendants’ Infringing Use of the READY CAPITAL Mark

28. In 2018, one of Ready Capital’s loan brokers relocated from California to Michigan and began working at 199 Pierce Street, Birmingham, Michigan 48009. Ready Capital’s loan broker soon encountered Backonen, President of RCMI, Nations Home Loan and MPD. RCMI had an office located in the same building.

29. According to RCMI’s website, it provides lending services in Michigan and the broader Midwest, including commercial real estate loans, bridge loans, and business loans, under the READY CAPITAL Mark. These services are in direct competition with those offered by Ready Capital under the Marks.

30. According to RCMI’s website, its first loan transactions under the READY CAPITAL Mark occurred on or around March 2, 2017, when it executed transactions in Ontario, Canada; Grand Rapids, Michigan; and Lafayette, Indiana.

31. Upon information and belief, contrary to RCMI’s website these March 2, 2017 loans were not closed by RCMI but were instead closed by Backonen’s other entities Nations Home Loan or MPD.

32. RCMI and Backonen have used the READY CAPITAL Mark on RCMI’s website at readycapitalmi.com and in various press releases, stating for example,

“Ready Capital is a direct lender that is known for its timely execution of bridge mortgages and bridge capital to businesses throughout the Midwest.” RCMI’s website further states, “Ready Capital facilitates sales of Midwest farmland,” and upon information and belief, Backonen and RCMI have marketed lending services broadly throughout the Midwest, including in the states of Indiana and Ohio.

33. RCMI’s website and press releases prominently display the READY CAPITAL Mark.

34. RCMI and Backonen additionally run social media sites under the READY CAPITAL Mark using the Twitter handle @readycapitalmi and a Facebook page, facebook.com/readycapitalmi.

35. A March 22, 2018 blog post on RCMI’s website lists approximately 50 “recent closings” in Michigan, largely in the metropolitan Detroit area. The post claims that RCMI “receive[s] inquiries from Every major Real Estate Company and Bank in Michigan.”

36. In September 2019, Ready Capital conducted lien searches for “Ready Capital” and variations of that term in the metropolitan Detroit area—including Oakland, Wayne, Macomb, and St. Clair counties—and found no evidence of RCMI’s claimed transactions.

37. In September 2020, Ready Capital again searched the public record, this time for loans closed by Backonen’s other entities Nations Home Loan and MPD, and discovered several—including many of the same loans advertised on RCMI’s website.

38. Upon information and belief, RCMI has not in fact closed any loan transactions in the metropolitan Detroit area.

39. Upon information and belief, RCMI markets loans and lending services, finds prospective borrowers, and closes the transactions through Backonen's other entities Nations Home Loan and MPD.

40. A LinkedIn profile purporting to belong to Backonen lists his past work experience as "Former Chairman of Birmingham Bancorp Mortgage." This corresponds with State of Michigan business filings identifying Backonen as an incorporator and director of the Birmingham Bancorp Mortgage Company ("**Birmingham**").

41. In 2010, the Office of the Inspector General at the United States Department of Housing and Urban Development ("**HUD**") issued a memorandum on Birmingham with the subject heading "Birmingham Bancorp Mortgage Corporation, West Bloomfield, MI, Did not Properly Underwrite a Selection of FHA Loans," recommending civil and administrative action for failing to properly underwrite Federal Housing Administration ("**FHA**") loans as an FHA direct endorsement lender. Published on July 21, 2010 on the HUD Inspector General's website, www.hudoig.gov, the memorandum cites nine Birmingham loans for which improper underwriting resulted in losses of \$643,340 from FHA's insurance fund.

42. The Inspector General memorandum recommended that HUD (1) determine whether it could pursue remedies against Birmingham under the Program Fraud Civil Remedies Act of up to \$1,354,180; and (2) take "appropriate

administrative action” against Birmingham and/or its principals for “material underwriting deficiencies.”

43. Michigan business filings indicate Birmingham did not file annual reports following the HUD memorandum, and it was subsequently dissolved in 2013.

44. Ready Capital is concerned that Defendants, through their unauthorized use of the READY CAPITAL Mark, are misleading consumers and the general public to wrongly believe that there is an association between Ready Capital and Defendants.

45. To protect its rights in the READY CAPITAL Mark, and to avoid litigation, Ready Capital reached out to RCMI and Backonen repeatedly, both directly and through counsel, to explore options for avoiding trademark conflict in Michigan and neighboring Midwestern states. RCMI, Backonen and their counsel repeatedly insisted RCMI had superior rights in the READY CAPITAL Mark but refused to provide any details to support such a claim.

46. By using and continuing to use the READY CAPITAL Mark in connection with lending services, Defendants are willfully and intentionally trading upon the goodwill Ready Capital has developed in the READY CAPITAL Mark at considerable expense and effort. Defendants’ unauthorized use of the READY CAPITAL Mark is likely to cause confusion and mistake among consumers as to the (a) source or origin of Ready Capital’s lending services and (b) non-existent affiliation between Defendants’ operations and those of Ready Capital.

Defendants' False Advertising

47. RCMI and Backonen market RCMI as a provider of SBA loans to consumers, including on RCMI's website at <https://www.readycapitalmi.com/about-restaurant-loan> ("We provide a wide variety of loan products including small business administration (SBA) financing, commercial bridge loans, debt consolidation, and access to commercial bank loans").

48. RCMI and Backonen further market RCMI as a direct lender, providing loans directly to consumers, including on RCMI's website at www.readycapitalmi.com ("DIRECT LENDER - PROVIDING TIMELY BUSINESS CAPITAL").

49. To provide SBA loans, lenders must first be certified by the SBA.

50. Plaintiffs have obtained SBA certification – ReadyCap Lending is a nationally recognized SBA lender referenced in the SBA Michigan District Office's reports of loan transactions provided by certified lenders.

51. Upon information and belief, RCMI and Backonen have not obtained SBA certification and their representations that RCMI provides SBA loans are false.

52. Upon information and belief, RCMI and Backonen falsely represent that RCMI is a certified SBA lender in an effort to attract consumers away from Plaintiffs and other lenders that have actually obtained SBA certification.

53. According to RCMI's own statements, it does not operate as a direct lender and the corresponding representations on its website are false.

54. Upon information and belief, RCMI and Backonen falsely represent that RCMI is a direct lender, rather than an intermediary that feeds loans to third parties, in an effort to attract consumers away from competitors like Plaintiffs.

COUNT I
Infringement of a Registered Trademark
(15 U.S.C. § 1114)
RCMI, Nations Home Loan, MPD and Backonen

55. Plaintiffs reallege, as if fully set forth at this place, the allegations contained in paragraphs 1-54 above.

56. RCMI and Backonen have used and continue to use in interstate commerce the READY CAPITAL Mark to market the lending services delivered by Nations Home Loan and MPD.

57. Nations Home Loan and MPD, acting in concert with RCMI and all under the direction and control of Backonen, are benefiting from and offering services under the READY CAPITAL Mark.

58. The unauthorized use of the READY CAPITAL Mark by Defendants as alleged herein constitutes infringement of a registered trademark in violation of 15 U.S.C. § 1114.

59. Defendants' use of the READY CAPITAL Mark in connection with the advertisement, offer to sell, and sale of their lending services is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship or approval of the parties' respective offerings, and/or as to the affiliation, connection or association between Defendants and/or their services and Plaintiffs and/or their services.

60. The infringement of Defendants is knowing, deliberate, and willful.

61. As a direct and proximate result of Defendants' actions described herein, Plaintiffs have suffered, and will continue to suffer, irreparable injury to their business, reputation, and goodwill, unless and until the Court enjoins Defendants' actions. Plaintiffs have no adequate remedy at law.

COUNT II
False Designation of Origin
(15 U.S.C. § 1125(a)(1)(A))
RCMI, Nations Home Loan, MPD and Backonen

62. Plaintiffs reallege, as if fully set forth at this place, the allegations contained in paragraphs 1-54 above.

63. Defendants have used and continue to use the READY CAPITAL Mark in interstate commerce in connection with lending services they market, advertise, offer for sale, sell, benefit from and/or profit from, infringing Plaintiffs' READY CAPITAL Mark in a manner that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiffs and/or as to the origin, sponsorship or approval of Defendants' services or commercial activities by Plaintiffs.

64. Plaintiffs believe they are and are likely to be damaged by these acts of false designation of origin by Defendants.

65. Defendants unauthorized use of the READY CAPITAL Mark as alleged herein constitutes false designation of origin in violation of 15 U.S.C. § 1125(a).

66. No adequate remedy exists at law for the irreparable harm Defendants' acts of false designation of origin have caused and are causing Plaintiffs. Plaintiffs are entitled to preliminary and permanent injunctive relief.

67. Defendants' acts of false designation of origin have been knowing, willful and in deliberate disregard of Plaintiffs' rights and of Defendants' obligations under federal law. Plaintiffs are entitled to a) Defendants' profits, b) any damages sustained by Plaintiffs, c) costs of the action, and d) enhanced damages under 15 U.S.C. § 1117(a).

68. This is an exceptional case within the meaning of 15 U.S.C. § 1117(a). Plaintiffs should be awarded reasonable attorneys' fees herein.

COUNT III
False Advertising
(15 U.S.C. § 1125(a)(1)(B))
RCMI and Backonen

69. Plaintiffs reallege, as if fully set forth at this place, the allegations contained in paragraphs 1-54 above.

70. Upon information and belief, RCMI and Backonen have falsely represented in interstate commercial advertising that RCMI is a direct and SBA-certified lender, misrepresenting the nature, characteristics, and qualities of its services and commercial activities.

71. Plaintiffs, as SBA-certified lenders and competitors of RCMI, believe they are and are likely to be damaged by these acts of false advertising by RCMI and Backonen.

72. RCMI and Backonen's false representations as alleged herein constitute false advertising in violation of 15 U.S.C. § 1125(a).

73. No adequate remedy exists at law for the irreparable harm RCMI and Backonen's acts of false advertising have caused and are causing Plaintiffs. Plaintiffs are entitled to preliminary and permanent injunctive relief.

74. RCMI and Backonen's acts of false advertising have been knowing, willful and in deliberate disregard of Plaintiffs' rights and of RCMI's and Backonen's obligations under federal law. Plaintiffs are entitled to a) RCMI's and Backonen's profits, b) any damages sustained by Plaintiffs, c) costs of the action, and d) enhanced damages under 15 U.S.C. § 1117(a).

75. This is an exceptional case within the meaning of 15 U.S.C. § 1117(a). Plaintiffs should be awarded reasonable attorneys' fees herein.

COUNT IV
Deceptive Trade Practices
(M.C.L. § 445.903)
RCMI, Nations Home Loan, MPD and Backonen

76. Plaintiffs reallege, as if fully set forth at this place, the allegations contained in paragraphs 1-54 above.

77. Defendants' unauthorized use of the READY CAPITAL Mark creates a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification by another.

78. Upon information and belief, RCMI and Backonen have falsely represented in advertising that RCMI is a direct and SBA-certified lender.

79. Defendants have willfully engaged in these trade practices, knowing them to be false and deceptive.

80. Defendants' unlawful conduct has caused harm to Michigan consumers.

81. Defendants' unlawful conduct has caused and will continue to cause irreparable harm and other damages to Plaintiffs if Defendants' conduct is not enjoined.

82. As a result of Defendants' wrongful and knowing deceptive trade practices, Plaintiffs are entitled to an injunction, damages, the costs of suit, and reasonable attorneys' fees pursuant to M.C.L. § 445.911.

COUNT V
Common Law Trademark Infringement
RCMI, Nations Home Loan, MPD and Backonen

83. Plaintiffs reallege, as if fully set forth at this place, the allegations contained in paragraphs 1-54 above.

84. Defendants' unauthorized use of the READY CAPITAL Mark in connection with lending services is likely to cause confusion and constitutes willful infringement of Plaintiffs' trademarks, in violation of Michigan common law.

85. Defendants' infringement is knowing, deliberate, and willful.

86. As a direct and proximate result of Defendants' actions described herein, Plaintiffs suffered, and will continue to suffer, irreparable injury to their business, reputation, and goodwill, unless and until the Court enjoins Defendants' actions. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Preliminarily and permanently enjoin and restrain Defendants, their officers, agents, servants, employees and attorneys, and any other person in active concert or participation with them who receive actual notice of the Court's order, from (a) using the READY CAPITAL Mark and any other confusingly similar name, mark or designation, and (b) falsely advertising their lending services.
2. Award Plaintiffs a monetary recovery consistent with 15 U.S.C. § 1117(a) in an amount to be proven at trial.
3. Enter judgment ordering Defendants to pay Plaintiffs all their reasonable taxable costs and attorneys' fees in this action in a sum and manner deemed appropriate by this Court pursuant to 15 U.S.C. § 1117(a), M.C.L. § 445.911 and/or other applicable law.
4. Any other relief this Honorable Court deems just and equitable.

JURY DEMAND

Dated: September 29, 2020

/s/ David R. Merritt
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